Milk Drivers & Dairy Employees of Minneapolis, St. Paul, and Central Minnesota, Miscellaneous Employees, Bakery, Laundry and Linen Drivers, Salesmen, Automatic Sales, Food Processing and Allied Industries, Employees of St. Paul, Minnesota and Vicinity, Teamsters Local Union No. 471, affiliated with the International Brotherhood of Teamsters, AFL–CIO[1] *and* Superior Coffee and Foods, Division of Sara Lee Corporation d/b/a McGarvey Coffee. Case 18–CB–3106

July 28, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

The question presented for Board review in this case[2] is whether the judge correctly found that the parties reached agreement on the terms of a binding contract which the Respondent subsequently refused to sign, in violation of Section 8(b)(3) of the Act.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Milk Drivers & Dairy Employees of Minneapolis, St. Paul, and Central Minnesota, Miscellaneous Employees, Bakery, Laundry and Linen Drivers, Salesmen, Automatic Sales, Food Processing and Allied Industries, Employees of St. Paul, Minnesota and Vicinity, Teamsters Local Union No. 471, affiliated with the International Brotherhood of Teamsters, AFL–CIO, Minneapolis, Minnesota, its officers, agents, and representatives, shall take the action set forth in the Order.

[1] The name of the Respondent has been changed to reflect the new official name of the International Union.

[2] On March 25, 1992, Administrative Law Judge Jay R. Pollack issued the attached decision. The Respondent filed exceptions and a supporting brief. The Charging Party filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

David M. Biggar, Esq., for the General Counsel.
James T. Hansing, Esq., of Minneapolis, Minnesota, for the Respondent Union.
Jeffrey C. Kauffman, Esq., of Chicago, Illinois, for the Employer.

DECISION

STATEMENT OF THE CASE

JAY R. POLLACK, Administrative Law Judge. I heard this case in trial at Minneapolis, Minnesota, on January 16, 1992. On September 4, 1991, Superior Coffee and Foods, Division of Sara Lee Corporation d/b/a McGarvey Coffee (Employer) filed the charge in the instant case alleging that Milk Drivers & Dairy Employees of Minneapolis, St. Paul, and Central Minnesota, Miscellaneous Employees, Bakery, Laundry and Linen Drivers, Salesmen, Automatic Sales, Food Processing and Allied Industries, Employees of St. Paul, Minnesota and Vicinity, Teamsters Local Union No. 471, affiliated with the International Brotherhood of Teamsters, AFL–CIO (Respondent), committed certain violations of Section 8(b)(3) of the National Labor Relations Act (the Act). On October 18, 1991, the Regional Director for Region 18 of the National Labor Relations Board issued a complaint and notice of hearing against Respondent, alleging that Respondent violated Section 8(b)(3) of the Act. Respondent filed a timely answer to the complaint, denying all wrongdoing.

All parties have been afforded full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. On the entire record, including observation of the demeanor of the witnesses, and having considered the posthearing briefs of the parties, I make the the following

FINDINGS OF FACT

I. JURISDICTION

The Employer is a corporation with an office and principal place of business located in Minneapolis, Minnesota, where it is engaged in the manufacture and sale of coffee.

The Employer, during the 12 months prior to the issuance of the complaint, purchased and received goods and products valued in excess of $50,000 from sellers or suppliers located outside the State of Minnesota. Accordingly, Respondent admits and I find that the Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Respondent admits and I find that it is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

Respondent has been party to a series of collective-bargaining agreements with McGarvey Coffee since at least 1983. The most recent agreement between Respondent and McGarvey expired by its terms on June 1, 1991. The Employer purchased the business from McGarvey Coffee Corporation in February 1991. At that time, the Employer agreed to recognize the Union as the exclusive bargaining representative of its employees. Further, the Employer agreed to assume the contract due to expire on June 1.

On April 1, the parties opened negotiations for a contract to succeed the expiring contract. The parties met on five occasions. On May 30, the parties reached agreement on a new contract, subject to ratification. The ratification was held, by agreement of the parties on May 31. The unit employees ratified the contract. Nelson Braun, Respondent's negotiator, no-

tified the Employer's plant manager that the agreement was ratified by the employees. Braun also notified Vince Pellettiere, the Employer's negotiator. Pellettiere offered to type the agreement for signature by the parties. The Employer put the agreement into effect on June 1.

On June 3, Sam Stintsman, the trustee overseeing Respondent-Union's operations, found the subcontracting language of the contract unsatisfactory and assigned his assistant, Charles Byrnes, to take care of the problem. Braun was told that the trustee would not sign the agreement. On June 14, Byrnes and Braun met with Pellettiere to discuss the subcontracting clause. Byrnes said that Stintsman had reprimanded Braun and Byrnes because of the subcontracting clause.[1] Pellettiere stated that the Employer had similar clauses in its other agreements. Pellettiere agreed to send copies of those other labor agreements. Pellettiere also agreed to look at some language that Byrnes was going to send him.

After the parties exchanged subcontracting language, Pellettiere said that the Union's proposals were unacceptable and he requested that the Union sign the agreed upon contract. Byrnes said he would recommend that Stintsman not sign the contract. The Union has, to date, refused to sign the contract.

In August a dispute arose over job classifications. That dispute is pending arbitation. Braun admitted that this is a typical contract dispute over contract interpretation. Braun never used this dispute as a reason for the Union's failure to sign the contract.

In this case, the General Counsel and the Employer allege that Respondent and the Employer reached agreement on a new collective-bargaining agreement on May 31, 1991, and that Respondent has failed and refused to execute a written contract embodying the terms of that collective-bargaining agreement. Respondent alleges that no agreement was reached. Further, Respondent alleges that before any agreement could be signed it had to be approved by Stintsman. Finally, the Union contends that the parties continued to bargain after May 30, 1991.

B. *Analysis and Conclusions*

Section 8(b)(3) of the Act provides: ''It shall be an unfair labor practice for a labor organization or its agents—(3) to refuse to bargain collectively with an employer, provided it is the representative of its employees subject to the provisions of Section 9(a).'' Section 8(d) of the Act explicitly requires the parties to a collective-bargaining relationship to execute '' a written contract incorporating any agreement reached if requested by either party.'' *H. J. Heinz Co. v. NLRB*, 311 U.S. 514 (1941). ''When an oral agreement is reached as to the terms of a collective-bargaining contract, each party is obligated, at the request of the other, to execute that contract when reduced to writing, and a failure or refusal to do so constitutes'' a violation of Section 8(b)(3) of the Act. *Liberty Pavilion Nursing Home*, 259 NLRB 1249 (1982); *Interprint Co.*, 273 NLRB 1863 (1985). ''It is well established that technical rules of contract do not control whether a collective-bargaining agreement has been reached.'' *Pepsi-Cola Bottling Co. v. NLRB*, 659 F.2d 87, 89 (8th Cir. 1981). Rather, the crucial inquiry is whether there ''is conduct manifesting an intention to abide and be bound by the terms of an agreement.'' *Capital-Husting Co. v. NLRB*, 671 F.2d 237, 243 (7th Cir. 1982).

In determining whether underlying oral agreement has been reached, the Board is not strictly bound by technical rules of contract law but is free to use general contract principles adopted to the bargaining context. *Americana Healthcare Center*, 273 NLRB 1728 (1985). The burden of proof is on the party alleging the existence of the contract. *Cherry Valley Apartments*, 292 NLRB 38 (1988).

In the instant case, the General Counsel must show not only that an agreement was reached, but that the document which Respondent has refused to execute accurately reflected that agreement. *Electrical Workers IBEW Local 1464 (Kansas City Power)*, 275 NLRB 1504 (1985); *Pacific Coast Metal Trades Council (Foss Shipyard)*, 260 NLRB 1117 (1982); *OCAW, Local 7-507 (Capital Packaging)*, 212 NLRB 98, 108 (1974).

Here the undisputed credible evidence establishes that after five bargaining sessions, the parties reached agreement on a new collective-bargaining agreement, subject to ratification by the bargaining unit employees.

The evidence shows, and Braun admitted, that the Employer had never agreed that Respondent could condition execution of the agreement upon approval of its chief executive officer. The parties agreed that the contract was conditioned only upon ratification by the unit employees. That condition was satisfied on May 31. The Act imposes no obligation on the Union to obtain the approval of its chief executive officer. If the Union required such approval, it should have obtained it prior to the ratification. See *North Country Motors, Ltd.*, 146 NLRB 671 (1964). See also *IBEW Local 22 (Electronic Sound)*, 268 NLRB 760, 763 (1984). When Braun informed the Employer that the contract had been ratified, the sole condition precedent had been removed and an oral agreement had been reached. Further, the ratification eliminated any issue concerning Braun's authority. The bargaining unit employees by ratifying the contract approved and sanctioned Braun's conduct. The Union cannot now claim that Braun exceeded his authority.

In *Vallejo Retail Trade Bureau*, 243 NLRB 762, 767 (1979), the administrative law judge stated, with Board approval:

> [T]he expression ''meeting of the minds'' in contract law does not literally require that both parties have identical subjective understandings on the meaning of material terms in the contract. Rather, subjective understandings (or misunderstandings) as to the meaning of terms which had been asserted to are irrelevant, provided that the terms themselves are unambiguous ''judged by a reasonable standard.'' *Pittsburgh-Des Moines Steel Company*, 202 NLRB 880, 888 (1973), and authorities cited therein. See also, e.g., *Monument Printing Co., Inc.*, 231 NLRB 1215, 1220 (1977), and authorities cited therein.

Braun never raised with the Employer any disagreement with the contract as written. Rather, the alleged disagreements arose after Stintsman unlawfully refused to sign the

[1] Braun had been reprimanded for agreeing to the subcontracting clause. Stintsman took away Braun's authority to negotiate this agreement.

contract. A contract, binding on the Union, had been reached prior to Stintsman's refusal to sign it. Applying the above case law, I find that any misunderstanding as to contract terms can be arbitrated. The Union still has its contract remedies but it cannot refuse to execute the agreed upon collective-bargaining contract.

As stated in *Teamsters Local 287 (Reed & Graham)*, 272 NLRB 348 (1984), the test is whether or not applying an objective or reasonable standard, irrespective of the subjective opinions of the parties, mutual agreement on a contract was reached. Judged by a reasonable objective standard, I find that a contract was reached and that Respondent was obligated to sign it.

Finally, I find no merit in Respondent's defense that Pellettiere waived the Employer's rights by bargaining over the subcontracting clause. The evidence shows that Pellettiere discussed the matter with Byrnes as a courtesy but never agreed to release Respondent from its obligations. No clear and unmistakable waiver can be found.

CONCLUSIONS OF LAW

1. The Employer is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(b)(3) of the Act, as alleged in the complaint.

THE REMEDY

Having found that Respondent engaged in unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and that it be ordered to execute the collective-bargaining agreement it reached with the Employer.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[2]

ORDER

Respondents Milk Drivers & Dairy Employees of Minneapolis, St. Paul, and Central Minnesota, Miscellaneous Employees, Bakery, Laundry and Linen Drivers, Salesmen, Automatic Sales, Food Processing and Allied Industries Employees of St. Paul, Minnesota and Vicinity, Teamsters Local Union No. 471, affiliated with the International Brotherhood of Teamsters, AFL–CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Refusing to bargain collectively with the Employer, McGarvey Coffee, by refusing to execute the collective-bargaining agreement reached with the Employer on May 31, 1991.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Execute the collective-bargaining agreement reached with the Employer in 1991.

(b) Post at its offices and meeting halls copies of the attached notice marked ''Appendix.''[3] Copies of said notice, on forms provided by the Regional Director for Region 18, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Sign and return to the Regional Director sufficient copies of the notice for posting by McGarvey Coffee, if willing, at all places where notices to employees are customarily posted.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[2] All motions inconsistent with this recommended Order are hereby denied. If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively with the Employer, McGarvey Coffee, by refusing to execute the collective-bargaining agreement reached with the Employer on May 31, 1991.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL execute the collective-bargaining agreement reached with the Employer in 1991.

MILK DRIVERS & DAIRY EMPLOYEES OF MINNEAPOLIS, ST. PAUL, AND CENTRAL MINNESOTA, MISCELLANEOUS EMPLOYEES, BAKERY, LAUNDRY AND LINEN DRIVERS, SALESMEN, AUTOMATIC SALES, FOOD PROCESSING AND ALLIED INDUSTRIES, EMPLOYEES OF ST. PAUL, MINNESOTA AND VICINITY, TEAMSTERS LOCAL UNION NO. 471, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA